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and NICHOLAS CHIM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELI ATTIA, AND ELI ATTIA ARCHITECT
PC.,

Plaintiffs,

v.

GOOGLE INC., FLUX FACTORY, INC.,
LARRY PAGE, SERGEY BRIN,
SEBASTIAN THRUN, ERIC "ASTRO"
TELLER, MICHELLE KAUFMANN,
JENNIFER CARLILE, AUGUSTO ROMAN,
NICHOLAS CHIM, AND DOES 1-100,

Defendants.

CASE NO.:

**DEFENDANTS' NOTICE OF
REMOVAL**

(Removed from the Superior Court of
the County of Santa Clara, California,
Case No. 2014-1-cv-274103)

State Action Filed: December 5, 2014

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446,
4 Defendants Google LLC,¹ Flux Data Inc.,² Larry Page, Sergey Brin, Sebastian Thrun, Eric
5 “Astro” Teller, Michelle Kaufmann, Jennifer Carlile, Augusto Roman, and Nicholas Chim
6 hereby remove to this Court the state court action described below.

7 **BACKGROUND**

8 1. This case started exclusively with state-law causes of action. There has never
9 been any basis for removal under diversity jurisdiction as there is not complete diversity. The
10 Superior Court of California, County of Santa Clara, where this case has been pending, gave
11 Plaintiffs leave to proceed with a Fourth Amended Complaint on October 4, 2017 that for the
12 first time contained federal causes of action, and accordingly removal jurisdiction now lies.

13 2. On December 5, 2014, Plaintiffs Eli Attia and Eli Attia Architect P.C. filed this
14 civil action in the Superior Court of California, County of Santa Clara, captioned Max Sound
15 Corporation, Eli Attia, and Eli Attia Architect PC v. Google Inc., Flux Factory, Inc., Larry Page,
16 Sergey Brin, Sebastian Thrun, Eric “Astro” Teller, Michelle Kaufmann, Jennifer Carlile,
17 Augusto Roman, Nicholas Chim, and DOES 1-100, Case No. 2014-1-CV-274103. The initial
18 complaint alleged exclusively state law causes of action for: (1) misappropriation of trade
19 secrets; (2) breach of contract; (3) breach of confidence; (4) breach of the covenant of good faith
20 and fair dealing; (5) slander of title; (6) conversion; (7) unfair competition under Cal. Bus. &
21 Prof. Code Section 17200; (8) fraud; and (9) declaratory relief. A copy of that complaint, related
22 civil cover sheet, and the summons as filed with the Court is attached as **Exhibit A**. Defendants
23
24

25 ¹ Google LLC was formerly known as Google Inc. On September 30, 2017, Google Inc. filed
26 a Certificate of Conversion with the Delaware Secretary of State, in which Google Inc. converted
27 from a corporation to a limited liability company and changed its name to Google LLC. Google
28 LLC will file an appropriate paper to formally update the case caption in this matter.

² Flux Data Inc. was formerly known as Flux Factory, Inc. Recently, Flux Factory, Inc.
became Flux Data Inc. Flux Data Inc. will file an appropriate paper to formally update the case
caption in this matter.

1 demurred to the complaint. On July 31, 2015, the court sustained the demurrer in part. A copy
2 of the July 31, 2015 Order is attached as **Exhibit B**.

3 3. On November 2, 2015, Plaintiffs filed a First Amended Complaint, alleging state
4 law claims for: (1) misappropriation of trade secrets; (2) breach of contract; (3) breach of the
5 covenant of good faith and fair dealing; and (4) declaratory relief. A copy of that complaint is
6 attached as **Exhibit C**. Defendants again demurred. On February 1, 2016, the court sustained
7 the demurrer in part. A copy of the February 1, 2016 Order is attached as **Exhibit D**.

8 4. On February 9, 2016, Plaintiffs filed a Second Amended Complaint, alleging
9 exclusively state law claims for: (1) misappropriation of trade secrets; (2) breach of contract; and
10 (3) declaratory relief. A copy of that complaint is attached as **Exhibit E**. Defendants again
11 demurred and also filed a motion to strike certain allegations. On August 22, 2016, the court
12 overruled the demurrer and granted the motion to strike. A copy of the August 22, 2016 Order is
13 attached as **Exhibit F**.

14 5. On August 26, 2016, Plaintiffs filed a Third Amended Complaint, alleging the
15 same, exclusively state-law claims as in the Second Amended Complaint. A copy of the Third
16 Amended Complaint is attached hereto as **Exhibit G**.

17 6. On September 26, 2017, Defendants answered the Third Amended Complaint.
18 Attached as **Exhibit H** is copy of the Google Defendants Answer. Attached as **Exhibit I** is a
19 copy of the Flux Defendants Answer.

20 7. Also on September 26, 2017, Google filed a cross-complaint against Plaintiff Eli
21 Attia Architect, P.C. alleging two exclusively state law claims for breach of contract, a copy of
22 which is attached as **Exhibit J**. On October 26, 2016, Eli Attia Architect, P.C. answered
23 Google's cross-complaint. A copy of that answer is attached as **Exhibit K**.

24 8. On July 25, 2017, Plaintiffs filed a Motion for Leave to File Fourth Amended
25 Complaint. With it, they submitted a proposed Fourth Amended Complaint that for the first time
26 asserted, in addition to the three state law claims asserted in the Third Amended Complaint, five
27 federal Civil RICO causes of action under 18 U.S.C. § 1964(c). This is the first time in this case
28 that any party sought leave to assert a claim that presents a federal question.

9. On October 4, 2017, the court granted Plaintiffs' Motion for Leave to File Fourth Amended Complaint. A copy of that Order is attached as **Exhibit L**. The Fourth Amended Complaint was deemed filed and served on October 4, 2017. It contains five federal law causes of action, asserted under RICO. A copy of the operative Fourth Amended Complaint is attached as **Exhibit M**. Defendants have not responded to the Fourth Amended Complaint.

PROCEDURAL REQUIREMENTS AND JURISDICTION

10. Removal is timely pursuant to 28 U.S.C. § 1446(b)(3) because this Notice of Removal is filed "within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."

11. As the parties are not diverse to one another, and the Fourth Amended Complaint is the first paper in this action to raise a federal question, this case did not become removable until Plaintiffs' Fourth Amended Complaint was deemed filed. *See Lucente S.P.A. v. Apik Jewelry, Inc.*, Case No. CV-07-04005 MMM (RZx), 2007 U.S. Dist. LEXIS 99515, at *12 (C.D. Cal. Oct. 1, 2007) ("The removal clock begins to run when the state court grants plaintiff's motion to amend to state a federal claim."); *Torres v. Chevron U.S.A., Inc.*, Case No. C 04-2523 SBA, 2004 U.S. Dist. LEXIS 21332, at *6 (N.D. Cal. Oct. 18, 2004) ("removal on the basis of federal claims asserted in a motion to amend the complaint, prior to the court's ruling on the motion, is premature."); *Desmond v. Bankamerica Corp.*, 120 F. Supp. 2d 1201, 1204 (N.D. Cal. 2000) (noting that plaintiffs' "intent to amend a complaint" did not trigger federal jurisdiction and that "removal in this case . . . will become available only upon the filing of an amended complaint."); *Mejia v. Prologix Distrib. Servs. (West), LLC*, Case No. 12-CV-4840 YGR, 2012 U.S. Dist. LEXIS 163001, at *14 (N.D. Cal. Nov. 14, 2012) ("removal jurisdiction based on an amended pleading arises only after the subsequent pleading becomes operative.") (citations omitted).

12. All Defendants have joined in this Notice of Removal. 28 U.S.C. § 1446(b)(2)(A).

13. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve a copy of this Notice on counsel for Plaintiffs and will file a copy of this Notice with the Clerk of the Superior Court for the County of the State of California, County of Santa Clara.

14. This Court now has subject matter jurisdiction over the dispute pursuant to 28 U.S.C. § 1331, as the Fourth Amended Complaint contains allegations under the Federal RICO statute, 18 U.S.C. §1961 *et seq.*

BASIS FOR REMOVAL

15. 28 U.S.C. § 1441(a) provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

16. The Fourth Amended Complaint alleges five causes of action under the Federal Civil RICO statute, 18 U.S.C. § 1964(c). *See* Fourth Amended Complaint ¶¶ 111-197.

17. The district courts of the United States have original jurisdiction over Civil RICO actions under 28 U.S.C. § 1331. The Superior Court of California, County of Santa Clara, is located within this District and Division. Venue is thus proper under 28 U.S.C. § 1441(a).

Dated: October 23, 2017

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Charles T. Graves
Charles T. Graves

Attorneys for Defendants
GOOGLE LLC, LARRY PAGE, SERGEY BRIN,
SEBASTIAN THRUN, and ERIC “ASTRO”
TELLER

Dated: October 23, 2017

TURNER BOYD LLP

By: /s/ Robert J. Kent
Robert J. Kent

Attorneys for Defendants
FLUX DATA INC., MICHELLE KAUFMAN,
JENNIFER CARLILE, AUGUSTO ROMAN, and
NICHOLAS CHIM

SIGNATURE ATTESTATION

I hereby attest that the other signatory listed, and on whose behalf the filing is submitted,
concurs in the filing's content and has authorized the filing of this e-filed document.

By: /s/ Charles T. Graves
Charles T. Graves